ly of the evidence, they were not the subject of larceny at common law. 4 Blackstone, *Commentaries* *234. By artificial reasoning, the piece of paper which contained the evidence of the debt was not deemed capable of being stolen, since it was absorbed in the chose of action which was of a higher nature. *Regina* v. *Watts* (1854) 6 Cox C. C. 304; 2 Russell, *Law of Crimes* (7th Eng. ed. 1910) 1264. But if the chose in action was void, or if the debt had been paid, an indictment lay for the theft of the piece of paper, if so described. *Rex* v. *Clark* (1810) Russ. & R. 180; *Regina* v. *Watts, supra;* see *People* v. *Cariclis* (1915) 29 Cal. App. 166, 169, 154 Pac. 1061. Paper not embodying a chose in action has always been the subject of larceny, the trivality of its value being immaterial, even though less than that of the smallest known coin. See *Regina* v. *Morris* (1840) 9 Carr. & P. 209, 210; *Wolverton* v. *Commonwealth* (1881) 75 Va. 909, 913. And this is true though it be of value only to the owner. See *State* v. *Hinton* (1910) 56 Ore. 428, 434, 109 Pac. 24; *contra, Payne* v. *People* (N. Y. 1810) 6 Johns. 103. The value of property which is not marketable is determined by its worth to the owner. *People* v. *McGrath* (1888) 5 Utah 525, 17 Pac. 116; *contra, State* v. *James* (1877) 51 N. H. 67. In holding that goods need not have any appreciable or market value to be the subject of larceny, the instant case is clearly sound.

EVIDENCE—PRESUMPTIONS—BURDEN OF PROOF.—In an action on a check, the defendant proved that it was given in payment for thirty barrels of whiskey. *Held,* for the defendant. The consideration is illegal unless legalized by permit: The burden is on the plaintiff to prove the transaction legal. *Adler* v. *Zimmerman* (1922) 233 N. Y. 431, 135 N. E. 840.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration. See N. I. L. § 24. By the weight of authority under the Negotiable Instruments Law, the defendant has the burden, not only of introducing some evidence of lack of consideration, but of ultimately establishing it by a preponderance of evidence. *Piner* v. *Brittain* (1914) 165 N. C. 401, 81 S. E. 462; see N. I. L. § 28; Brannan, *Negotiable Instruments Law* (3rd ed. 1920) 95. Evidence compatible with either legality or illegality of the consideration ought not, in general, to destroy the plaintiff's prima facie case, for if there are two alternatives the law presumes legality. *Cincinnati & T. P. Ry.* v. *Rankin* (1916) 241 U. S. 319, 36 Sup. Ct. 555; *Anderson* v. *Erie R. R.* (1918) 223 N. Y. 277, 119 N. E. 557. The weight of this presumption varies. In criminal law the prosecution is forced to establish its case beyond a reasonable doubt See *Coffin* v. *United States* (1895) 156 U. S. 432, 459, 15 Sup. Ct. 394. In civil cases where the action is predicated on the criminality of the defendant, the general rule is that the plaintiff need only show a preponderance of evidence. *New York County Nat. Bk.* v. *Herrman* (1916) 173 App. Div. 814, 160 N. Y. Supp. 422; *Cooper* v. *Spring Valley Water Co.* (1911) 16 Cal. App. 17, 116 Pac. 298; *contra, McInturff* v. *Insurance Co. of N. A.* (1910) 248 Ill. 92, 93 N. E. 369; *cf. Burgill* v. *Aniol* (1920) 218 Ill. App. 466. Where the act is made generally unlawful, however, the presumption of innocence yields to the presumption that what is true in general is true in particular, and the burden of proof is on the person claiming to come within an exception. *People* v. *Clark* (1901) 61 App. Div. 500, 70 N. Y. Supp. 594; see Bishop, *Statutory Crimes* (3rd ed. 1901) § 1051; *contra, Davis* v. *Kuehn* (Tex. Civ. App. 1909) 119 S. W. 118. This rule, as illustrated by the instant case, has the advantage of practicability, for it is relatively simple for the plaintiff if the transaction be legal to prove it by producing the permit, since its existence is peculiarly within his knowledge. *Cf. Harris* v. *White* (1880) 81 N. Y. 532, 547. Furthermore, the National Prohibition Act makes possession of liquors prima facie evidence of an intention to dispose of them illegally. See National Pro-

hibition Act (1919) 41 Stat. 317; *Rose* v. *United States* (C. C. A. 1921) 274 Fed. 245, 252.

LANDLORD AND TENANT—CONSTRUCTIVE EVICTION.—A leased premises to the plaintiff who sublet part thereof to the defendant for purposes to which A assented. A then prevented the defendant's use for such purposes and the defendant thereupon abandoned possession. In an action for rent, the defendant set up the defense of constructive eviction. *Held,* for the defendant. *Jones & Brindisi Inc.* v. *Bernstein Bros.* (Mun. Ct., Borough of Manhattan, 9th Dist., June Term, 1922).

Any disturbance of the tenant's possession by the landlord which deprives him of the beneficial enjoyment of the leased premises, provided he abandons them within a reasonable time thereafter, amounts to a constructive eviction, *Sully* v. *Schmitt* (1895) 147 N. Y. 248, 41 N. E. 514, and serves as a defense to an action for rent. *Presly* v. *Benjamin* (1902) 169 N. Y. 377, 62 N. E. 430. But this must be the result of a wrongful act of commission or omission on the part of the landlord. *Barrett* v. *Boddie* (1895) 158 Ill. 479, 42 N. E. 143. And he is not liable for the wrongful acts of third persons not authorized by him. *Gardner* v. *Keteltas* (N. Y. 1842) 3 Hill 330. Where there is an eviction by a title paramount the tenant is likewise exonerated from the payment of rent. *Smith* v. *Shepard* (Mass. 1833) 15 Pick. 147. In the instant case, the plaintiff must be regarded as the landlord and the defendant as the tenant, for a sublease, as distinguished from an assignment, creates a new estate in which there is no privity of estate or of contract between the original lessor and the sub-lessee. See *Collins* v. *Hasbrouck* (1874) 56 N. Y. 157, 162. Since the wrongful act here was committed by A, a stranger to the lease therefore, and not by the plaintiff nor under his authority or direction, and since A's assent to the sublease destroyed his claim to a title paramount, there seems to be no logical basis for denying a recovery.

LIBEL AND SLANDER—INNKEEPER'S LIABILITY FOR REFUSING ROOM TO MARRIED COUPLE WITHOUT BAGGAGE.—The plaintiff and her husband were refused accommodation at the defendant's hotel because they had no baggage. The plaintiff, contending that the refusal imputed unchastity, brought this action of slander in which the defendant received a verdict. *Coquelet* v. *Union Hotel Co.* (1922) 139 Md. 544, 115 Atl. 813.

In general an innkeeper is bound to furnish lodging to all travelers who are ready to pay the proper charges, provided accommodations are not exhausted. See *Jackson* v. *Virginia Hot Springs Co.* (D. C. 1913) 209 Fed. 979, 980. But he may enforce such reasonable rules as are designed to prevent immorality, drunkenness or any other misconduct that would be offensive to other guests or that would bring his inn into disrepute. See *DeWolf* v. *Ford* (1908) 193 N. Y. 397, 403, 86 N. E. 527. An innkeeper may thus reject persons with bad reputations, *Goodenow* v. *Travis* (N. Y. 1808) 3 Johns. 427, brawlers, drunkards, idlers, *Markham* v. *Brown* (1837) 8 N. H. 523, or guests of suspicious characters. See *State* v. *Steele* (1890) 106 N. C. 766, 771, 11 S. E. 478. Couples applying at hotels without baggage are so often bent upon an immoral purpose that they may well be classified as suspicious characters and excluded under the rule of *State* v. *Steele, supra.* The court wisely upheld a rule which seems well calculated to protect public morals, despite the hardships caused by it in some instances of which the instant case is an example.

LIBEL AND SLANDER—MENTAL SUFFERING—GENERAL AND SPECIAL DAMAGES.—The defendant published an article in which the plaintiff was accused of insanity. In an action for libel, the plaintiff, to show greater damages, introduced evidence